

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
City Council Chambers
Wednesday, August 14, 2013
6:00 p.m.

1) CALL MEETING TO ORDER

The meeting was called to order at 6:00 p.m.

2) ROLL CALL

Commissioners: Duncan McIntosh, Chair - Absent (Excused)
 Brad Avery, Vice Chair
 Paul Blank
 David Girling
 Karen Rhyne
 Joe Stapleton
 Doug West

Staff Members: Chris Miller, Harbor Resources Manager
 Shannon Levin, Harbor Resources Supervisor

Council Liaison: Council Member Nancy Gardner

2) PLEDGE OF ALLEGIANCE – Commissioner Joe Stapleton

3) PUBLIC COMMENTS

Vice Chair Avery invited those interested in addressing the Commission to do so at this time.

Council Member Gardner reported that she will be unable to remain at the meeting for her usual segment because all of the items on the agenda have the possibility of being appealed to Council. Therefore, on the advice of the City Attorney, she will be recusing herself. She announced upcoming "look back" meetings regarding pier fees with the first meeting being held Thursday, August 15, 2013, at 3:00 p.m. at OASIS. The second meeting will be held August 21, 2013, at 6:00 p.m. at OASIS. Consideration will be given to internal inconsistencies and whether adjustments are needed. The meeting will not open into question whether fees are warranted; that has been decided. Consideration will be given to determine if improvements or changes are necessary. Additionally, she reported that Council recently continued an item on which it was discussing the few cases where a pier extends across property lines and whether it should be made consistent with other transfers or whether it should be distinctly and separately handled. She reported that the item will return before Council at its meeting in September.

Jim Mosher commented on the recent Council meeting noting that Item 3 on the agenda was the first reading of an ordinance changing the Harbor Commission's purpose and responsibilities where new responsibilities were added, none were eliminated and the terms of office were maintained. Additionally, he commented on the matter of pier encroachments and the transfer of a dock at a specific site. He referenced testimony regarding litigation and felt that if there was a threat of litigation, the public has the right to know what the threat was. He hoped that the Harbor Commission will agendaize the matter to determine what is occurring regarding the property and why Council is considering changing the ordinance.

There being no others wishing to address the Harbor Commission, Vice Chair Avery closed the public comments portion of the meeting.

4) APPROVAL OF MINUTES – July 10, 2013 Minutes

Motion: Commissioner Blank made a motion to approve the minutes of the Harbor Commission of the July 10, 2013, Regular Meeting, as presented. Commissioner Rhyne seconded the motion, which carried with 6 ayes and 0 noes, and Chair McIntosh, absent. Approved.

5) CURRENT BUSINESS

1. *3388 Via Lido Dock and Boardwalk Project*

Harbor Resources has received an application to remove and replace the dock and boardwalk at 3388 Via Lido. The new slips will be assigned to the two residential units at the upland property. The boardwalk will be replaced like-for-like maintaining public access along the waterfront.

Recommendation:

- 1) Provide comment to staff. Receive and file.

Vice Chair Avery introduced the item and read title to the aforementioned item.

Harbor Resources Supervisor Shannon Levin presented details of the report. She addressed location, existing conditions, and surrounding properties, details of the proposal, public access, and boardwalk, compliance with the Municipal Code and Design Guidelines and gangways. She noted this is a significant development of which the Harbor Commission needs to be informed.

Members of the Commission commented positively on the proposal.

Ms. Levin reported that adjacent property owners have been notified of the matter. She noted that the dock does not extend past the Project Line. She added that it will require a residential pier permit and will require a five-foot setback. Public access will be provided.

Interested parties were invited to address the Harbor Commission on this matter.

Ron Lorntzen, DJM Capital Partners, expressed concerns regarding access to the docks and asked that the Commission consider both developments, together; to make sure they are in sync with each other.

There being no others wishing to address the Harbor Commission, Vice Chair Avery closed public comments for this item.

Ms. Levin reported there is a continuous headwalk that runs along the Lido Marina Village, which will be severed near the location of the boardwalk, and public access will no longer run along the headwalk. Public access will be maintained all along the Lido Marina boardwalk and Ms. Levin pointed out the access points.

Chris Miller, Harbor Resources Manager reported that generally, the public uses the elevated boardwalk along existing restaurants and store fronts. Those who use the floats and headwalk are typically people associated with the boats on the dock. He explained the path with the proposed project. He added that planning staff helped in determining the rules for the subject property.

Commissioner West suggested allowing a thirty-day period to ensure that adjacent neighbors understand the project and there is compatibility with the plans.

2. *Mooring Permit Revocations for Failure to Pay Annual Rental Fees: S-145, H-410, C-42, and J-51*

Four mooring permittees have failed to pay their annual mooring rental fees despite repeated attempts by City staff to collect the mooring rental fees. Mooring permits may be revoked due to failure to pay annual rental fees. Annual rental fees are initially invoiced in January with late-payment notices in April and May. According to Newport Beach Municipal Code (NBMC) Chapter 17.70, the Harbor Commission shall conduct a hearing prior to revoking a mooring permit.

Recommendation:

- 1) Hold a public hearing, consider the relevant evidence, and if justified under NBMC Sections 17.60.040(L)(1) and 17.70.020(A)(5), revoke mooring permit S-145 for failure to pay annual rental fees.
- 2) Hold a public hearing, consider the relevant evidence, and if justified under NBMC Sections 17.60.040(L)(1) and 17.70.020(A)(5), revoke mooring permit H-410 for failure to pay annual rental fees.
- 3) Hold a public hearing, consider the relevant evidence, and if justified under NBMC Sections 17.60.040(L)(1) and 17.70.020(A)(5), revoke mooring permit C-42 for failure to pay annual rental fees.
- 4) Hold a public hearing, consider the relevant evidence, and if justified under NBMC Sections 17.60.040(L)(1) and 17.70.020(A)(5), revoke mooring permit J-51 for failure to pay annual rental fees.

Vice Chair Avery reported having a business relationship with one of the subject permittees, recused himself from hearing the matter and departed the Chambers.

Commissioner Blank took charge of the meeting.

Harbor Resources Supervisor Levin presented details of the report addressing collection of fees, issuance of late notices and efforts by Harbor Resources staff to collect the fees. She referenced applicable provisions in the Code and addressed location of the moorings and the status of each of the subject moorings and subsequent actions should the permits be revoked. She added that if the Commission revokes the permits, there will be a fourteen-day appeal period in which permittees may appeal the findings through Council. If no appeal is brought forth, the permittees must remove any vessels within thirty days.

In response to an inquiry from the Commission, Ms. Levin reported that, with tonight's meeting notice, the permittees have been given six opportunities to pay the fines. It is their responsibility to notify Harbor Resources of any changes in address or contact information. None of the permittees have contacted Harbor Resources in response to the communications sent.

Discussion followed regarding the process if moorings are revoked.

In relation to the revocation of mooring permit S-145, discussion followed regarding the amount due. It was noted that on-shore moorings are half of the off-shore mooring rates.

Commissioner West stated that the record reflects that the mooring holder has received substantial due process.

Interested parties were invited to address the Commission on this matter.

Jim Mosher commented on topic rather than the individual cases and suggested that notices may have been distributed to the wrong addresses. He reported that there are no existing by-laws for the Harbor Commission and suggested that it may be helpful for the Commission to consider establishing rules for how a hearing should be held.

There being no others wishing to address the Harbor Commission, Commissioner Avery closed public comments for this item.

Motion: Commissioner West made a motion that under NBMC Sections 17.60.040(L)(1) and 17.70.020(A)(5), to revoke mooring permit S-145 for failure to pay annual rental fees. Commissioner Girling

seconded the motion, which carried with 5 ayes and 0 noes, with Commissioner Avery, recused and Chair McIntosh, absent. Approved.

In relation to the revocation of mooring permit H-410, Commissioner Blank addressed the amount due and status of the mooring.

Interested parties were invited to address the Harbor Commission on this matter.

Robert White, permittee, apologized for his negligence and stated he is prepared to meet his financial obligation.

Mr. Miller explained the process going forward for this case, noting that the permittee would need to pay the fees through the City's Cashier.

There being no others wishing to address the Harbor Commission on this matter, Commissioner Blank closed public comment for this item.

Motion: Commissioner Girling made a motion to not revoke mooring permit H-410 subject to successful collection of the fees due by end of day, August 15, 2013, otherwise it will revert to revocation. Commissioner Stapleton seconded the motion, which carried with 5 ayes and 0 noes, with Commissioner Avery, recused and Chair McIntosh, absent. Approved.

Regarding revocation of mooring permit C-42, Commissioner Blank addressed the amount due and status of the mooring.

Interested parties were invited to address the Harbor Commission on this matter. There was no response and public comments were closed.

Motion: Commissioner Rhyne made a motion that under NBMC Sections 17.60.040(L)(1) and 17.70.020(A)(5), to revoke mooring permit C-42 for failure to pay annual rental fees. Commissioner Girling seconded the motion, which carried with 5 ayes and 0 noes, with Commissioner Avery, recused and Chair McIntosh, absent. Approved.

Regarding revocation of mooring permit J-51, Commissioner Blank addressed the amount due and status of the mooring.

Interested parties were invited to address the Harbor Commission on this matter. There was no response and public comments were closed.

Motion: Commissioner Girling made a motion that under NBMC Sections 17.60.040(L)(1) and 17.70.020(A)(5), to revoke mooring permit J-51 for failure to pay annual rental fees. Commissioner Stapleton seconded the motion, which carried with 5 ayes and 0 noes, with Commissioner Avery, recused and Chair McIntosh, absent. Approved.

Vice Chair Avery returned to the Chambers and took his place on the dais.

3. Request for Moorage for Two Large Vessels in Newport Harbor

At the July meeting, the Harbor Commission was requested to consider allowing the Invictus, a 216' vessel, to moor in Newport Harbor on a temporary basis for two months. Coincidentally, the Marama, a 130' vessel, made a similar request as well. The Harbor Commission formed a subcommittee to review the requests and to provide a recommendation at the August meeting.

Recommendation:

- 1) Per the subcommittee's recommendation, the Harbor Commission is requested to advise the Harbor Resources Manager to approve the Invictus and Marama's request to moor in

Newport Harbor with certain conditions as described below and as discussed at tonight's meeting.

Vice Chair Avery presented a brief background of the aforementioned item including consideration by the Harbor Commission and the formation of a Subcommittee to review the matter.

Harbor Resources Manager Miller provided details of the report addressing the Harbor Commission's goal to encourage a more welcoming and preferred destination of Newport Harbor for all vessels. He addressed availability of moorings for various size vessels, formation of a subcommittee to review the requests for the Invictus and Marama, evaluation of requests and determination of mooring locations based on the depths in the Harbor. He presented proposed mooring locations, harbor depths and length of the proposed stays. Mr. Miller commented on the relationship of the vessels in the specific parts of the Harbor and reported that the boat show will be in full swing at the same time the Marama will be moored. The vessels will not be sharing the area but Mr. Miller approximated the general area of the mooring. He stated that the subcommittee recommends allowing the moorings on a trial basis, noting that it will not set a precedent, but will provide information to gather for future requests. He noted that the events do not occur on a regular basis and that it is merely coincidence that the two requests have occurred at the same time. He noted that the vessels are not commercial or party boats, but rather private vessels. The subcommittee developed conditions for consideration by the Commission and Mr. Miller presented details of the conditions as stated in the report.

Commissioner Girling stated that he knows the Invictus applicant and that despite the acquaintance, he can be unbiased and objective during these discussions. Regarding the Invictus, he reported trying to choose the safest location that mitigated homeowner views and noise from generators. He reported that both vessels would have to adhere to the City's noise requirements while they are in the Harbor. He noted that Harbor Patrol participated in the meetings to ensure compliance with safety standards and added that if the City incurs any related costs, it will be reimbursed. He recommended that if similar cases will be handled on an on-going basis, he recommended reviewing the fee schedule going forward.

If the Commission decides to support this, it was noted that this is based on an ad-hoc decision and that no standards or policies are being established at this time and it is an opportunity to see how it works, or doesn't work.

In reply to Commissioner Blank's inquiry regarding an application for a marine activity permit regarding the matter, Mr. Miller reported there will be no application for a marine activity permit but that the request is sufficient for its purpose at this time. A more formal form may be developed in the future. The conditions will be communicated to the owners of both vessels.

Commissioner Rhyne stated the need for more information and expressed concerns regarding crew sizes, minimum maneuvering speeds, noise and diesel exhaust, fuel docks, water and pump out, access on and off the ships, indemnity and security and the lack of appropriate guarantees.

Commissioner Girling reported that the Invictus plans on using the Balboa Bay Club for staging, but is not familiar with the logistics or the crew.

Mr. Miller reported that a condition may be included that the mooring permit can be revoked at any time.

Discussion followed regarding using the situation as a test run.

Vice Chair Avery reported that he knows the owner of Marama but he can be unbiased and objective during these discussions. He noted that the captains and crews are professional and would not approach the City if they had any issues of concern. He added that the vessels have the latest technology and licensing of crews and there is precedent in the Harbor for mooring of large vessels. He suggested proceeding with the request on a trial basis.

Interested parties were invited to address the Harbor Commission on this matter.

Judy Cole, 3326 Via Lido, felt that testing the concept is premature and expressed concerns with harbor depth, anchor swing, blocked views and setting a precedent.

Pam Whitesides, 3328 Via Lido, spoke in opposition to the matter and commented on the heavy use of the harbor, blocked views, lack of privacy and possible decreases in property values. She encouraged the Commission to ensure that harbor uses are compatible with the adjacent residential neighborhoods.

Len Bose commented on the need for lighting on anchorages, and moorings, and association rules related to crew members staying on board.

Jim Mosher stated that originally, the Invictus was to moor for a one-week christening party but that it now has morphed into a two-month home port stay. He acknowledged the concerns listed by Commissioner Rhyne, added the need for due process and wondered regarding the appointment of Commission Members to the subcommittee and inclusion of other people in making recommendations.

There being no others wishing to address the Harbor Commission on this item, Vice Chair Avery closed public comments.

Commissioner West commented on the use of a public waterway and permission for anchorage by the Harbormaster. He wondered regarding the fundamental objection, but felt that the process has been very thorough.

Commissioner Rhyne felt that the 130' boat should not be anchored for a week, especially with a single anchor. Regarding interim anchorage for two months for the Invictus, she felt that the Commission is making a premature decision. She felt that there is not sufficient information to make a proper decision.

Mr. Miller suggested a condition that the Marama require a bow anchor and a stern mooring.

It was noted that the Marama captain feels there is sufficient area to swing.

Motion: Commissioner West made a motion that the requests for the anchorages of the two vessels for the periods of time mentioned be approved and recommended to the Harbor Resources Division and that the smaller vessel be encouraged to use stern mooring to avoid swinging.

Commissioner Girling noted he is sensitive to Commissioner Rhyne's concerns and agreed with the possibility of making the mooring revocable.

Commissioner West felt that the right to revoke is implicit.

Commissioner Blank seconded the motion, which carried with 5 ayes and 1 noes, with Commissioner Rhyne, opposed and Chair McIntosh, absent. Approved.

Item No. 5 was heard at this juncture.

4. Review the Proposed Harbor Commission Objectives for Fiscal Year 2013-14

The Harbor Commission will review and provide input to the proposed Commission Objectives for 2013-14. The Subcommittee will then refine the Objectives and return in September with a final recommendation.

Recommendation:

- 1) Provide input to the proposed Harbor Commission Objectives for fiscal year 2013-14.

Commissioner West, Chair of the Subcommittee for the development of objectives for fiscal year 2013-2014, addressed the subcommittee members and reported on meetings to consider the objectives and presented a

first draft of proposed objectives. He commented on the process including a review by the Tidelands Management Committee to seek their approval and endorsement. He highlighted the objectives noting they are an evolution of objectives adopted last year. He noted that they were organized under two main headings including the responsibility of the Harbor Commission to ensure the long-term welfare of Newport Harbor and the promotion of Newport Harbor as a preferred and welcoming destination. The first category is to continue the work to achieve final interagency approval of the Newport Shallow Water Eelgrass Mitigation Plan which will support a new Regional General Permit (RGP-54) process. He noted there has been substantial progress on this matter within the last year and reported that it is on track to be achieved by April 1, 2014 and the supporting mitigation program in the Newport specific plan needs to be in place by that time. He suggested incorporating the specific effective date into the objective.

Public comments were invited, but here were none.

The next objective relates to completion of recommendations for the best public use of Lower Castaways. He added that changes include cooperating with the Parks, Beaches and Recreation Commission to develop specific recommendations in the development of the Lower Castaways for presentation to Council.

Commissioner Girling reported that the Subcommittee reached out to the Parks, Beaches and Recreation Commission and they have appointed two Ad Hoc Members to serve on the subcommittee.

Another objective is to secure the California Department of Boating and Waterways approval for a proposed amendment to the Harbor Code granting an exception to the Harbor speed limit. He stressed that this is the year for accomplishing this objective.

Public comments were invited, but here were none.

Commissioner West addressed the objective of investigating the existing designations to the Bulkhead and Pierhead Lines in conjunction with the current vessel overhang regulations and compliance. He reported that the issue was presented to the Tidelands Management Committee and the subcommittee received direction to proceed with the objective. He indicated that Commissioner Rhyne has expressed interest in participating and will serve as Chair of the subcommittee, going forward. He added that the Tidelands Management Committee asked that the subcommittee not pursue Project Line realignment and encouraged focusing on Bulkheads and Pierhead Lines in connection with existing vessel overhang regulations.

Public comments were invited, but there were none.

Commissioner West presented the fifth objective to strengthen the Harbor Commission's public outreach to better communicate the Commission's role, purpose and objective. He noted that progress has been made, thanks to the press and that efforts will be redoubled in that regard.

Included for further consideration are derelict vessels and alternative offshore mooring designs. Commissioner West wondered if objectives should be developed on the two topics. He noted the lack of appropriate data regarding the issue of derelict vessels and felt that the first step in developing a solution would be to decide whether it is a problem in the harbor.

Discussion followed regarding the adequacy of the existing list and the possibility of adding the two topics for consideration in next year's objectives. There was general support for considering the concepts but it was suggested to wait until next year.

Under the category of promoting Newport Harbor as a preferred and welcoming destination, Commissioner West reported on the continued collaboration with Visit Newport Beach to plan and execute a Harbor Summit Event. He noted that the organization has changed its name to Newport Beach and Company and noted the need to update the objective to reflect same.

Public comments were invited on this item.

Jim Mosher reported that Visit Newport Beach still exists and is a component of Newport Beach and Company.

There were no others wishing to address the Commission.

Commissioner West reported on the objective related to public piers and considering potential new locations for public piers. He reported that the work is on-going with the support of the Subcommittee.

Commissioner West addressed the completion of an evaluation of public anchorage alternatives, acknowledged public concerns and noted it is the recommendation of the subcommittee that the Commission continue to consider the option.

The public was invited to comment on this item.

Len Bose commented on publicity and steps that could be taken by the Commission to obtain funds.

Pam Whitesides reported that it is possible to do something at the turning basin if outside music is forbidden. She complained about noise and chaos and suggested that the matter would need specific rules including enforcement of the rules by the Harbor Patrol.

There were no others wishing to address the Commission.

Commissioner West addressed the last objective regarding the completion and publication of a Harbor Cruising Guide. He reported that it will be an update to the existing cruising guide, noted changes in the Harbor and felt that it would be appropriate to make the changes to the Cruising Guide. The subcommittee is also considering further enhancing the online version of the guide on the website. He added that Commission Members have been identified to serve on the subcommittees associated with each of the objectives and that recommendations include re-establishing the various subcommittees. He added that a report will be presented to the Harbor Commission at its next meeting for action at that time.

5. Harbor Commission Representation on the Tidelands Management Committee's Citizens Advisory Panel

The Harbor Commission will recommend one Commissioner for the City Council's Citizens Advisory Panel ("CAP") of the Tidelands Management Committee.

Recommendation:

- 1) The Harbor Commission will recommend Paul Blank to represent the Harbor Commission on the Citizen's Advisory Panel of the Tidelands Management Committee.

Vice Chair Avery provided a brief background noting that at a previous meeting, Commissioner Blank expressed interest in representing the Harbor Commission on the Citizen's Advisory Panel of the Tidelands Management Committee. He added that it, in no way, limits the Harbor Commission's participation on the panel.

Motion: Commissioner West made a motion to approve Commissioner Blank to represent the Harbor Commission on the Citizen's Advisory Panel of the Tidelands Management Committee. Commissioner Rhyné seconded the motion, which carried with 6 ayes and 0 noes, with Chair McIntosh, absent. Approved.

Item No. 4 was heard at this juncture.

7) SUBCOMMITTEE REPORTS

Commissioner Girling provided an update on the Lower Castaways Subcommittee noting that two Ad Hoc Members from the Parks, Beaches and Recreation Commission have been appointed to same. He reported

receipt of a study by Anchor QEA on the bulkheads and presented a brief summary including costs involved in site development. He addressed options for the site and noted that the process is moving along.

Commissioner Blank reported he has appointed himself to the Entertainment Subcommittee and reported watching a movie referenced by Councilmember Gardner at the previous meeting. He commented on scheduling ride-a-longs with the Harbor Patrol and offered applications to those interested in participating. He will follow up with interested Members.

Commissioner Blank presented a brief update on the Harbor Summit and the Public Piers Subcommittee and addressed next steps in the process. He congratulated Derek Pickell who won the recent 2013 Junior Sabot National Championship.

Commissioner Stapleton commented on a phone app available for the Harbor through Visit Newport Beach.

The public was invited to comment and there was no response.

8) QUESTIONS AND ANSWERS WITH COUNCIL LIAISON ON HARBOR RELATED ISSUES - None

9) QUESTIONS AND ANSWERS WITH HARBOR RESOURCES MANAGER ON HARBOR RELATED ISSUES

Harbor Resource Manager Miller reported that the City received word from the Coastal Commission that the Marina Park project permit is in the mail and addressed next steps going forward.

He announced the upcoming workshops on commercial and residential piers and moorings on Thursday, August 15, 2013, at 3:00 p.m. at OASIS and August 21, 2013, at 6:00 p.m. at OASIS and addressed items for consideration during those meetings.

Mr. Miller addressed the Harbor Commission's purpose and responsibilities and stated that the second reading of the ordinance will occur during the September 10, 2013, Council meeting.

He reported on the progress of the RGP-54 and the City's Eelgrass plan. He thanked Commissioner West for his help on the matter. He noted that there is a current permit process in place and encouraged residents to submit their applications on time.

10) PUBLIC COMMENTS ON SUBCOMMITTEE REPORTS OR QUESTIONS AND ANSWERS WITH COUNCIL LIAISON OR HARBOR RESOURCES MANAGER

The public was invited to comment and there was no response.

11) COMMISSION ANNOUNCEMENTS OR MATTERS WHICH MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)

Vice Chair Avery commented on Code Enforcement on the Harbor and coordinating with the Harbor Patrol. He stated that he would like to explore the matter further in the future.

Brief discussion followed regarding providing an update on the vessel Cheyenne.

12) DATE AND TIME FOR NEXT MEETING: September 11, 2013, 6:00 PM

13) ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:13 p.m.

